



May 7, 1999

Mr. Scott Kelly
Deputy General Counsel
The Texas A&M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR99-1244

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124040.

The Texas A&M University System ("A&M") received a request for the grade distribution, enrollment roster and group case presentation grading sheets for a particular course, as well as examinations of four named students of the course. You have supplied to this office some of the information responsive to this request.¹ You have highlighted a portion of the submitted information. You assert that the highlighted information, as well as the unsubmitted responsive information, is excepted from public disclosure by section 552.101 of the Government Code in conjunction with 20 U.S.C. §1232(g), the Family Educational Rights and Privacy Act ("FERPA"), as well as by sections 552.026 and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain

¹In Open Records Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). Section 552.026 of the Government Code requires the release of information requested under the Public Information Act to conform with FERPA. Under the federal statute, "education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). Section 552.114 of the Government Code excepts from disclosure, "information in a student record at an educational institution funded wholly or partly by state revenues." Gov't Code § 552.114. This office has generally treated section 552.114 "student record" information as the equivalent of "education record" information that is protected by FERPA. Open Records Decision Nos. 634 at 5 (1995).

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).

In determining what information tends to identify a particular student, our office has adopted the definition articulated in federal regulations issued under section 1232g of title 20 of the United States Code. This regulation reads:

"Personally identifiable" means that the data or information includes (a) the name of a student (b) the address of the student, (c) a persona identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

45 C.F.R. § 99.3 (1976); *See* Open Records No. 165 at 4 (1977).

FERPA provides that, "directory information" may be released to the public if the institution or agency complies with section 1232g(a)(5)(B) of title 20 of the United States Code. "Directory information" includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. 20 U.S.C. § 1232g(a)(5)(A). Section 1232g(a)(5)(B) provides as follows:

[a]ny educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any

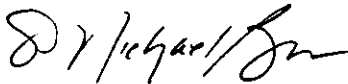
or all of the information designated should not be released without the parent's prior consent.

20 U.S.C. § 1232g(a)(5)(B). If the district has designated requested information as directory information, given public notice of the designation, and allowed a reasonable period of time for response to the notice, then it may release the designated information. However, information for which the district has not taken the above steps, in compliance with section 1232g(a)(5)(B), must be withheld from required public disclosure under FERPA.

As regards the information in this case, you have not established that the grade distribution information tends to identify any particular student. It is therefore not excepted from public disclosure and must be released. We note that student identification numbers and registration status information on the class list were not requested. As they are not responsive to this request, they need not be released. The remaining class enrollment information is apparently "directory" information. *See* Open Records Decision No. 244 (1980). If the conditions specified in 20 U.S.C. § 1232g(a)(5)(B) have been satisfied vis-a-vis this information, it may be released under FERPA; otherwise it may not be released. We note that you did not supply the group presentations grading sheets and student examinations information. We therefore express no opinion regarding this information. If A&M determines that the disclosure of this information would make a student's identity easily traceable, this information must be withheld. If you have further questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office. *See* 20 U.S.C. § 1232g(a)(5)(B).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 124040

encl. Submitted documents

cc: Mr. Douglas Chumley
4325 Ocean Drive, 5 C
Corpus Christi, Texas 78412
(w/o enclosures)